GOVERNMENT OF INDIA
LAW AND JUSTICE
LOK SABHA

UNSTARRED QUESTION NO:4818
ANSWERED ON:19.12.2002
JUDICIAL PRONOUNCEMENTS UNDERMINING THE AUTHROITY OF PARLIAMENT
PRIYA RANJAN DASMUNSI

Will the Minister of LAW AND JUSTICE be pleased to state:

(a) whether the Government are aware that on the basic policy matters of the Government, over-activism of judicial pronouncements are undermining the authority of Parliament and the Cabinet system of the Government; and

(b) if so, the steps that Government is contemplating to ensure that judicial activism is not encouraged to encroach into the authority of Parliamentary System and the Cabinet system of functioning of democratic Government?

Answer

MINISTER OF STATE FOR COAL, MINES, LAW AND JUSTICE (SHRI RAVI SHANKAR PRASAD)

(a)&(b) Some people have this feeling that over activism of Judicial pronouncements is encroaching into the domain of other organs of the state. However, public interest litigation, which is the outcome of judicial activism, has proved to be fruitful for purposes of redressing the grievances of the downtrodden masses, public injury, enforcing public duty, protecting social rights and vindicating public interest. It has to some extent served the purpose of helping the poor and underprivileged for getting justice.

In order to prevent misuse of public interest litigation, the Supreme Court has recently laid down certain guidelines in Raunaq International Ltd. Vs. I.V.R. Construction Ltd.(AIR 1999 SC 393), Malik Brothers Vs. Narendra Dadhich & Others (1999(5)SCAL 212) and Balco Employees Union (Regd.) Vs. Union of India & Others (2001(8)SCALE 541) which are as follows:-

(1) The public interst litigation should not be merely a cloak for attaining private ends of a third party or of the party bringing the petition.

(2) The court should examine the previous record of public service rendered by the organization bringing public interest litigation.

(3) Before entertaining a writ petition and passing any interim orders in such petition, the court must carefully weigh conflicting public interests. Only when it comes to a conclusion that there is overwhelming public interest in entertaining the petition, the court should intervene. Public interest be segregated from Public curiosity.

(4) Even when public interest litigation is entertained, the court must be careful to weigh conflicting public interests before intervening.

(5) party on whose instance interim orders are obtained has to be made accountable for the consequences of the interim order. In appropriate cases, the petitioner asking for interim orders should be asked to provide security for any increase in costs as a result of delay or any damages suffered by the opposite party in consequence of any interim order. Stay orders or interim order if passed must be moulded to provide for restitution. If the public interest litigation fails, the public must be compensated for the delay in implementation of the project and the cost escalation resulting from such delay on account of the interim order.

(6) If the court finds that in the grab of public interest litigation, actually an individual`s interest is sought to be carried out or protected, it would be the bounden duty of the court not to entertain such petition.

(7) The court should restrict the flow of cases in the name of public interest litigation, otherwise traditional litigation will suffer and courts of law, instead of dispensing justice will have to take upon themselves administrative and executive functions.

In view of the above guidelines prescribed by Supreme Court regarding Public Litigation, no measures are intended to be taken for

prevention of misuse of Public Interest Litigation at the moment. In fact, it is for the courts to ensure that frivolous litigations in the name of Public Interest Litigation by persons having vested interests are not entertained.